IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

MINUTE ORDER

Dept. 1A

Chambers Session: No appearances. February 26, 1993, present Hon. Ted Millard, Assistant Presiding Judge of the Orange County Superior Court, assigned by Chief Justice Lucas to hear and determine matters of judicial disqualification in this matter. CASE NO. BC 41515. FULBRIGHT & JAWORSKI v. SHIEH, et al.

DEFENDANT SHIEH'S MOTION TO DISQUALIFY THE HONORABLE EDWARD Y. KAKITA.

The Court, pursuant to C.C.P. § 170.3 (c) (6), deems it unnecessary in this case to hold a hearing and decides

the question of disqualification on the basis of the statements submitted.

Mr. Shieh has caused by be filed Statements of Disqualification against Judge Kakita in three (3) different cases that were assigned to him involving Mr. Shieh as either a plaintiff or defendant. This tripartite challenge to Judge Kakita is but one of many such challenges against different state and federal trial court judges that have made rulings that are not to Mr. Shieh's liking. He has unsuccessfully challenged the following state and federal judges on the grounds of bias: Judge Coleman A. Swart, Judge Xanthos, Judge Gadbois and Judge Davies. Judge Dickran Tevrizian who heard the challenge to Judge Gadbois termed the challenge "wholly frivolous and a sham," as well as describing Mr. Shieh as being "vexatious." That ruling

was made on or about June 17, 1992, and can best be described as an understatement. Mr. Shieh is a vexatious litigant whose campaign of litigation terror appears to be to accuse nearly every judge who has ever ruled against him of being "biased" or a "racist." Judge Kakita is but the latest target of his litigation terror.

It is well settled in this state that the expressions of opinion uttered by a judge, in what the judge conceives to be a discharge of his or her official duties, are not evidence of partiality within the disqualification statutes. (C.C.P. 170.2 [b]; KRELING v. SUPERIOR COURT (1944) 25 C.2d 305, 310-311; GUARDIANSHIP of JACOBSON (1947) 30 C.2d 312, 317-318.)

Where the charge of impartiality is made becuase of some prior ruling of the judge against a party or attorney,

in the same or related proceeding, it usually fails. (Cal. Procedure, 3rd Ed., Witkin, COURTS 4, pp. 111-112.) A party's remedy for an erroneous ruling or order, if there were any, is by appeal or writ, not a motion to disqualify. Were the rule otherwise, parties could regularly collaterally attack judgments by motions to disqualify rather than or in addition to appellate review. In short, prior rulings against a party in the course of the litigation, without "something more" are not grounds for disqualification within the meaning of C.C.P. Section 70.2 (b). As WITKIN suggests, prior rulings, even prior erroneous rulings (RYAN v. WELTE (1948) 87 C.A.2d 888) or opinions formed at trial without a showing of actual hostility or ill will do not disqualify a judge. The " something more" referred

to in the cases is not present in this case.

Furthermore, there is a general rule that where a party or the party's attorney acts toward a judge in a manner calculated to create bias or prejudice, disqualification of the judge ordinarily will not be required. A party or the attorney should not be able to engage in judge-shopping by manufacturing bias or prejudice that previously did not exist. See Judicial Conduct and Ethics, Shalman, Lubet & Alfini (1990) 5.06, - Acts Calculated to Create Bias, pp. 106-107 and cases cited therein.

Section 170.3, subd. (c) (1) requires that the disqualification statement set forth "the facts constituting the grounds" for disqualification of the judge. Mere conclusions of the pleader are

insufficient. (In re MORELLE (1970) 11 C.A. 3d 819, 843; URIAS v. HARRIS FARMS, INC. (1991) 234 C.A. 3d 415, 426.) Mr. Shieh's challenge is devoid of any "facts" constituting any ground of disqualification. It is replete with outrageous conclusionary allegations, unsupported by any specific facts. In short, no reasonable third party aware of the "facts" (as distinguished from conclusions) in this case would entertain a doubt as to the Judge Kakita's impartiality. Therefore, the request to disqualify Judge Edward Y. Kakita is denied.

Furthermore, since the challenge in this case is wholly frivolous, a sham, and outrageous, Mr. Shieh and/or any present or future counsel for Mr. Shieh is hereby ordered and directed not to file any further challenges for cause against Judge Kakita, without first

seeking and obtaining leave from the Presiding Judge or his designee, upon a showing of good cause to believe that said judge is not impartial, to do so.

The Clerk is directed to give notice by copy of this Minute Order.

IT IS SO ORDERED ON FEBRUARY 26, 1993.

THEODORE E. "TED" MILLARD, ASSISTANT PRESIDING JUDGE OF THE ORANGE COUNTY SUPERIOR COURT SITTING OF ASSIGNMENT BY THE JUDICIAL COUNCIL FOR LOS ANGELES COUNTY.